IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1188 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

THAKAR MADHUBHAI AMBALAL

Appearance:

1. First Appeal No. 1188 of 1979

MR L.B.DABHI, AGP for the Appellant

MR MC SHAH for Respondent No. 1-6

Notice served to Respondent No. 7-9

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/11/2002

ORAL JUDGEMENT

By means of filing this First Appeal under Section 96 of the Code of Civil Procedure ('the Code' for

short), Appellant State of Gujarat has brought under challenge the judgement and decree dated March 31, 1979 rendered in Special Civil Suit No. 63 of 1975 by the learned Civil Judge (S.D.) Nadiad, by which Respondent Nos. 1 to 6 were awarded total compensation of Rs.25000/- with cost and running interest @ 6% per annum from the date of filing of the Suit till payment or realisation from the appellant.

2. Appellant was the defendant No.1, Respondent Nos. 1 to 6 were the plaintiffs whereas Respondent Nos. 7,8,9 were the defendant Nos. 2,3 & 4. For the sake of convenience and brevity, parties are hereinafter referred to as plaintiffs and defendants in this judgement.

3. Plaintiffs who are the heirs and legal representatives of the deceased Pankaj, who met with an untimely death in police firing on 7.2.1974 at Borsad town by the defendant Nos. 2, 3 & 4 who where the employees of appellant No.1 State of Gujarat at the relevant point of time, filed Special Civil Suit No. 63 of 1975 for recovery of Rs.25000/- as damages from the defendants.

4. According to the case of the plaintiffs, marriage of Sudhaben was to take place on 17.2.1974 for which deceased Pankaj was moving in the Borsad town on 7.2.1974 for distributing the invitation cards to the plaintiffs' relatives and acquaintance. Deceased Pankaj went to distribute the cards in Jetiawad street of Borsad town where there was no disturbance. At that time, defendant Nos. 2, 3 & 4 went there and fired bullets recklessly and mercilessly without any reason. In the said firing deceased Pankaj received bullet injury on his left leg and as a result thereof he fell down, immediately thereafter another bullet was fired from the defendant Policeman which has resulted into acute bleeding to Pankaj and he was crying for for water. At that time defendant Nos. 2 to 4 came near deceased Pankaj loaded with gun and fired bullet on his abdomen stating that take this water and the said 3rd bullet passed through the abdomen of Pankaj cutting his spleen and other vital organs inside and defendant Nos. 2,3 & 4 were personally liable for the merciless firing, and defendant No.1 was liable as a master of defendant Nos. 2, 3 & 4 and was also liable to pay compensation. It was the case of the plaintiffs that after receiving the said injury deceased Pankaj was removed to the Hospital. However, during treatment deceased Pankaj succumbed to the said injuries on 13.2.74. According to the plaintiffs, there was no cause of provocation for the police to fire bullet on

deceased Pankaj. The said firing in the peaceful street was wanton, uncalled for and most unjustified. It was also far in excess of authority of the police and as a result of such firing Pankaj was killed by the defendant Nos. 2, 3 & 4 Policemen.

5. Putting forth the claim for compensation, plaintiffs averred that the deceased Pankaj was educated young man of 22 years. He was serving as Clerk in Cooperative Ginning Society at Borsad getting monthly salary of Rs.203/-. He was quite healthy and he could have lived at least for 40 years more if he would not have died premature death as a result of bullet shot injury. Deceased Pankaj was a great asset to the plaintiffs. He was contributing to the family members. The plaintiffs, therefore, had claimed for compensation by way of damages of Rs.25000/- by way of dependency benefit with running interest and cost from the defendants.

6. Defendants resisted the plaintiffs' suit by filing written statement Exhibit-25, inter alia contending that suit was false and not maintainable. The defendants had denied all the averments made in the plaint. The Defendants had also denied the fact that the deceased Pankaj was distributing invitation cards on 7.2.1974 in Borsad town. It was also denied by them that they had intentionally killed Pankaj. According to the defendant, there was antifood price rice agitation in the whole of Gujarat State which started from January 1974 and ended in March 1974 after demand of dissolution of Ministry which took place on March 15, 1974. According to the defendant it took a serious turn and Government properties and Private properties were looted and there were decoities and rioting committed by antisocial elements under the name of New Nirman Samiti which demanded dissolution of State Assembly. It was also contended that on 7.2.1974, Nav Nirman Youth Samiti Unit, Borsad had given a call for Borsad Bandh in response to which shops of Borsad were closed and daily routine was also disturbed. A procession of about 5000 persons were taken out with slogans of antiprice rise and dissolution of State Assembly. The procession went to S.T. Bus stand and then turned to violence and started pelting stones to the S.T. Buses and damaged furniture. A mob became violent and pelted stones on policemen on duty at Kharid Vechan Shop and took out the articles from the Sangh Shop and burnt them. The police constable repeatedly requested the mob to disperse but no response was given. They continued pelting stones, and in their illegal activities, life of police and properties of the

Sangh were in danger, so Police Constable ultimately opened fire and two persons of the mob received bullet injuries and thereafter mob was dispersed. The Police Constable had arrested seven persons from the Sangh shop and offences under Sections 143, 147, 149, 395, 336, 337, 435, 332, 333 and 114 of the IPC were registered as CR No. 38 of 1974. So it was claimed that in discharge of the public duty, defendants had fired bullet shot. It was also pleaded that suit against the defendant was not maintainable in view of the provision of Section 161 of the Bombay Police Act as well as the suit was time barred as it was filed beyond the period of six months from the date of incident, and therefore, it was prayed to dismiss the suit with cost.

7. The learned Trial Judge has framed issues at Exhibit-26 and recorded oral evidence of plaintiff No.1 at Exhibit-53 and witnesses Shanabhai Dhulabhai Exhibit-71 and Dhirendra Kumar Jethagir, practicing Advocate of Borsad town at Exhibit-72. On behalf of defendants, defendant Nos. 2,3 & 4 were examined at Exhibits 74, 75 and 76 respectively, one Police Constable Shivabhai Shanabhai was examined at Exhibit-81 and one Police Sub Inspector N.J.Jadav was examined at Exhibit-82. The learned Trial Judge after considering the oral testimony of the witnesses and the documentary evidence produced before him, and the submissions advanced at the bar, recorded the following findings and conclusion:

i) That there was disturbance on 7.2.1974 at 5:00 PM in the street known as Jetiawada.

ii) That there was no justification for police firing on 7.2.1974 at about 5:00 PM.

iii) That the firing was far in excess of authority of the police.

iv) That defendant Nos. 2, 3 & 4 recklessly and mercilessly without any justification and provocation fired at the deceased Pankaj.

v) That the deceased Pankaj died due to reckless and unjustifiable firing by defendant Nos. 2, 3 & 4.

vi) That the plaintiffs were entitled to compensation of Rs.25000/- from the defendants jointly and severally.

On the aforesaid findings and conclusion, the

learned Trial Judge allowed the suit and passed the decree as prayed for in favour of the plaintiff.

It is this finding and consequential judgement and decree which is now on unveil of scrutiny before this Court.

8. Mr. L.B.Dabhi, learned AGP for Defendant No.1 State of Gujarat contended that there was ample evidence on record to come to the conclusion that because of the rioting situations, procession of 5000 persons were taken out with slogans of antiprice rise and dissolution of State Assembly. Defendant Nos. 2, 3 & 4 were on duty at that relevant time. A mob became violent and pelted stones on Policemen on duty at Kharid Vechan Shop and they broke open the doors of Kharid Vechan Shangh shop and took out the articles from the Sangh shop and burnt them. The Police Constable repeatedly requested the mob to disperse but no response was given. They continued in pelting stones and in their illegal activities, life of police and the properties of the Sangh were in danger and so Police Constable ultimately opened fire and in that firing deceased Pankaj received bullet injuries to which he succumbed during treatment, therefore, there was no intentional act on the part of the defendants to kill the deceased Pankaj. The learned Trial Judge has misread the aforesaid aspect and passed the decree. He, therefore, urged that the decree which is recorded against the State of Gujarat is against the evidence on record and therefore, the same is deserved to be quashed and set aside by allowing this appeal.

9. Mr. M.C.Shah, learned advocate for the Plaintiffs has supported the judgement and decree through out. According to him, there is ample evidence on record that the Police had fired bullet shots on deceased Pankaj without any cause mercilessly and recklessly and acceded the authority vested in them. There is ample evidence on record that the mob was dispersed. Thereafter also Police continued to fire. Deceased Pankaj received injury after the mob dispersed, therefore, there is no reason for defendant Nos. 2, 3 & 4 to take the law and order situation in their hands and to fire bullet shot on the deceased Pankaj, and therefore, there is no error or illegality committed by the learned Trial Judge in recording the judgement and decree as prayed for. He also contended that after receiving two bullet shots by the deceased Pankaj the mob was dispersed, then there was no reason to fire third bullet shot which was fatal and was inflicted on the spleen. There is also evidence to the effect that the police fired 15 bullet shots and out

of those 15 bullet shots three bullet shots were fired on the deceased, therefore it was intentional act on the part of the defendant to kill the deceased Pankaj. Therefore, there is no illegality committed by the learned Trial Judge in passing the judgement and decree which is impugned in this appeal, and as such the same does not warrant any interference in this Appeal which is filed under Section 96 of the Code.

10. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the memo of the Appeal, grounds set out therein and the impugned judgement and decree, which has given rise to the present Appeal. I have also perused the set of oral evidence which is a part of the record of this First Appeal.

11. At the outset, be it stated that on behalf of the plaintiffs three witnesses have been examined including the practicing Advocate of Borsad town and on behalf of defendant, five witnesses have been examined.

12. To decide the controversy raised in this Appeal, it would be appropriate to have a glance on the oral testimony of the witnesses; Sunilbhai Dhulabhai Exhibit-71 and Dhirendrabhai Gosabhai, practicing Advocate of Borsad town Exhibit-72 who were claiming to be eye witness of the seen of incident. According to them Police started firing from mercilessly and recklessly. After receiving the first and second bullet shot, deceased Pankaj fell down and thereafter he was demanding for water. Thereupon, Police has inflicted 3rd bullet shot on the abdomen of the deceased Pankaj by saying that take this water. It may be appreciated that both these witnesses had withstood the test of the cross-examination successfully and nothing adverse has been brought out from their evidence on this aspect. Therefore, there is no manner of doubt that the third bullet shot which was inflicted on the abdomen of the deceased Pankaj after the mob was dispersed was intentional, reckless and merciless action on the part of defendant Nos. 2, 3 & 4, and therefore, they are liable to pay compensation.

13. So far as the determination of quantum of compensation of Rs.25,000/- is concerned, I do not deem it expedient to discuss this point, as according to me, an amount of Rs.25000/- for untimely demise of a young, healthy, educated and surving boy can hardly be said to be excessive, and therefore, the learned Trial Judge has very rightly awarded the damages of Rs.25000/- by way of

compensation to the heirs and legal representatives of the deceased Pankaj.

14. It is a settled legal position that even at the final hearing stage when the appellate court agrees with the reasons given and conclusions arrived at by the Trial Court, it is not necessary for the appellate court to reiterate the evidence and elaborately state reasons for reaching the same conclusion. Expression of general agreement with the reasons given and conclusions arrived at by the Trial Court would be sufficient. This is so held by the Supreme Court in the case of GIRIJANANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHOUDHARY, AIR 1967 SC 1124.

15. Seen in the above context, I am of the opinion that no error is committed by the learned Trial Court in deciding the point that there was no disturbance on 7.2.1974 in the street known as Jatiawad at Borsad town and there was no justification for firing the bullets on deceased Pankaj by the defendants, and therefore, the plaintiffs were entitled to the damages of Rs.25000/- by way of compensation.

16. In above view of the matter, I find myself in complete agreement with the reasoning adopted by the learned Trial Judge and ultimate finding reached by him, and therefore, there is no justifiable ground and valid reason to interfere with the judgement and decree passed by the learned Trial Judge in exercise of power under Section 96 of the Code, hence the Appeal deserves to be dismissed by confirming the judgement and decree passed by the learned Trial Court.

17. For the foregoing reasons, Appeal fails and is accordingly dismissed with costs.

(A.M.Kapadia, J)
Jayanti*